

CASE No. _____

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SEIU LOCAL 121RN,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

**PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR
RELATIONS BOARD**

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SEIU Local 121RN (“Local 121RN”) hereby petitions the United States Court of Appeals for the Ninth Circuit for review of the Order of the National Labor Relations Board in Case No. 31-CA-229412, reported at 367 N.L.R.B. No. 72, entered on January 24, 2019, and attached hereto, denying Local 121RN certain remedies that it requested for unfair labor practices under Section 8(a)(5) and (1) of the National Labor Relations Act committed by the employer East Valley Glendora Hospital, LLC d/b/a Glendora Community Hospital. Local 121RN requests that this Order be modified to grant the requested remedies.

DATED: February 1, 2019

LISA C. DEMIDOVICH
DEXTER RAPPLEYE
BUSH GOTTLIEB, A Law Corporation

By: /s/ Lisa C. Demidovich

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner SEIU Local 121RN (“Local 121RN”) makes the following disclosure statement:

- (1) Local 121RN does not have any parent corporations; and
- (2) There is not any publicly-held corporation that owns 10% or more of Local 121RN’s stock.

DATED: February 1, 2019

LISA C. DEMIDOVICH
DEXTER RAPPLEYE
BUSH GOTTLIEB, A Law Corporation

By: /s/ Lisa C. Demidovich
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NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**East Valley Glendora Hospital, LLC d/b/a Glendora Community Hospital and SEIU Local 121RN.
Case 31-CA-229412**

January 24, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND KAPLAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 16, 2018, by SEIU Local 121RN (the Union), the General Counsel issued the complaint on October 30, 2018, alleging that East Valley Glendora Hospital, LLC d/b/a Glendora Community Hospital (the Respondent) has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 31-RC-229412. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69 (d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On November 20, 2018, the General Counsel filed with the National Labor Relations Board a Motion for Summary Judgment.¹ On November 29, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the unit is inappropriate because the charge nurses, who voted under challenge, are supervisors and that the Union was improperly certified because it utilized charge nurses

in its election campaign, including by designating one charge nurse as its election observer.³

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Glendora, California (the Respondent's facility) and has been operating a general acute-care hospital.

In conducting its operations during the 12-month period ending on September 30, 2018, the Respondent derived gross revenues in excess of \$250,000. In conducting its operations during the above period, the Respondent purchased and received at its Glendora, California facility goods valued in excess of \$5000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following a representation election held on May 23, 2018, the Union was certified on June 22, 2018,⁴ as the exclusive collective-bargaining representative of the employees in the following unit:

Included: All full-time, regular part-time, and per diem Registered Nurses employed by the Employer at 150 W. Route 66, Glendora.

³ In its answer to the complaint, the Respondent also asserts that the complaint allegations are barred in whole or in part by laches and the 6-month limitations period set forth in Sec. 10(b) of the Act. Because the Respondent admits that it has failed and refused to bargain with the Union since October 12, 2018, and the complaint issued on October 30, 2018, we find no merit to the Respondent's contention.

⁴ On October 4, 2018, by unpublished Order, the Board denied the Respondent's request for review of the Regional Director's Decision on Objections and Certification of Representative.

¹ The Union filed a joinder in the General Counsel's motion.

² Member Emanuel is recused and took no part in the consideration of this case.

Excluded: All other employees, supervisor RNs, confidential employees, managers, guards, and supervisors as defined in the National Labor Relations Act, as amended.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About October 4, 2018, the Union, by email, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about October 12, 2018, the Respondent has failed and refused to recognize and bargain with the Union.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since October 12, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).⁵

⁵ The Union requests that the Board grant certain extraordinary remedies, including, among others, mail notice, an additional statement affirmatively recognizing the Union, an extended posting period, and the reading of the notice at employee meetings on worktime by a Board agent, who would also answer employee questions. We deny the Union's request, as we find that the Board's traditional remedies are sufficient to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, East Valley Glendora Hospital, LLC d/b/a Glendora Community Hospital, Glendora, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with SEIU Local 121RN as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time, regular part-time, and per diem Registered Nurses employed by the Employer at 150 W. Route 66, Glendora.

Excluded: All other employees, supervisor RNs, confidential employees, managers, guards, and supervisors as defined in the National Labor Relations Act, as amended.

(b) Within 14 days after service by the Region, post at its facility in Glendora, California, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 12, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 24, 2019

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain with SEIU Local 121RN as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

Included: All full-time, regular part-time, and per diem Registered Nurses employed by us at 150 W. Route 66, Glendora.

Excluded: All other employees, supervisor RNs, confidential employees, managers, guards, and supervisors as defined in the National Labor Relations Act, as amended.

EAST VALLEY GLENDORA HOSPITAL, LLC
D/B/A GLENDORA COMMUNITY HOSPITAL

The Board's decision can be found at www.nlrb.gov/case/31-CA-229412 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

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Date February 1, 2019

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